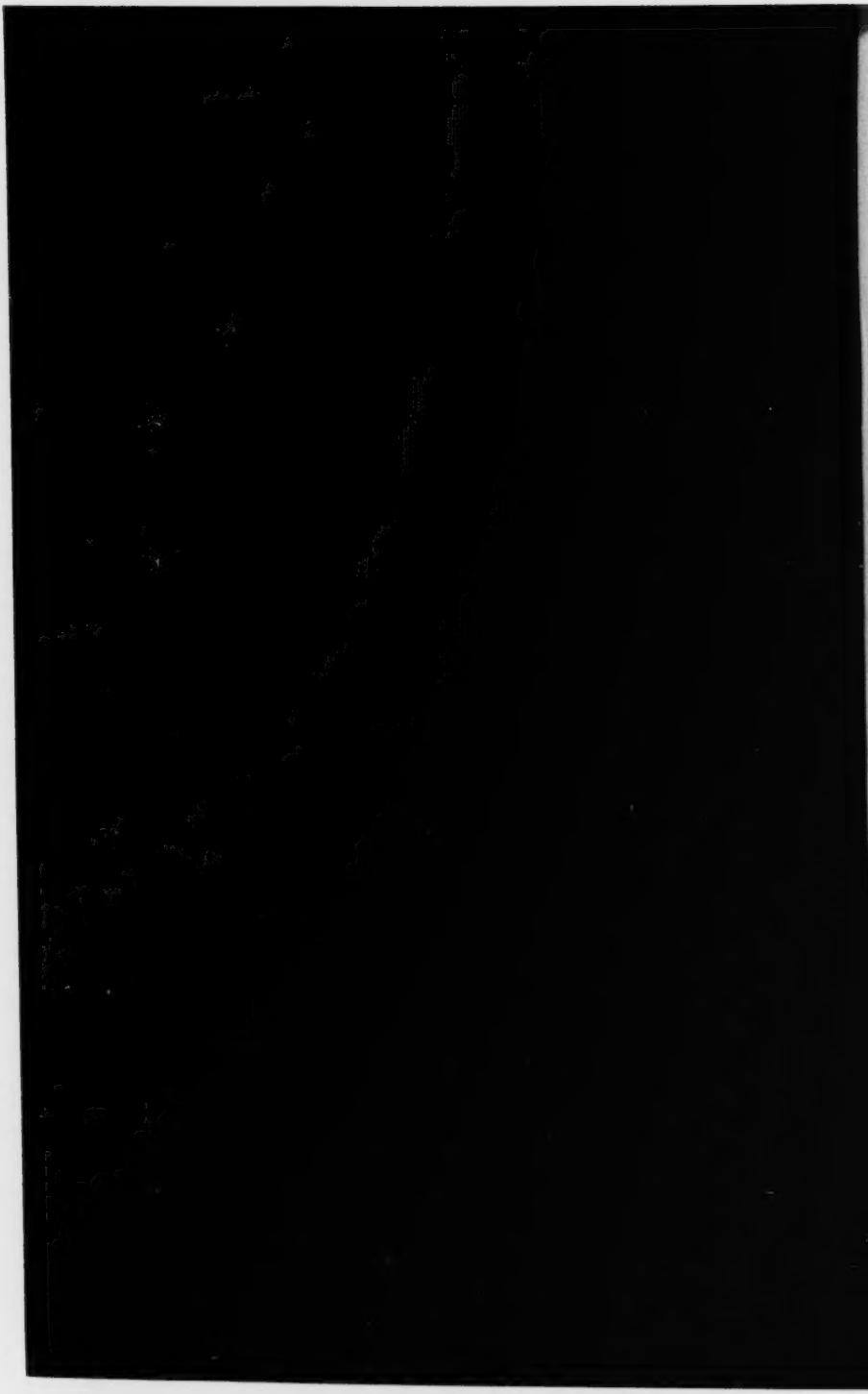


In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

No.

COUNTY OF FRESNO and WALTER S. HENDERSON, JR., Assessor of the County of Fresno, State of California,
Petitioners,

vs.

COMMODITY CREDIT CORPORATION,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

(A) RULINGS OF THE COURTS BELOW.

The Circuit Court of Appeals for the Ninth Circuit ruled in favor of the respondent and affirmed the judgment and order of the District Court of the United States for the Southern District of California, Northern Division. The opinion of the Circuit Court, although appearing in the record (R. 43-50) has not, as yet, been reported.

The District Court ruled in favor of the respondent and its opinion, in the form of a memorandum of order, appears in the record (R. 22) but has not been reported.

(B) JURISDICTION.

The jurisdiction of the Court is invoked under Section 240, Judicial Code, as amended by the Act of February 13, 1925. (43 Stats. 938, 28 U.S.C.A. Vol. 4, p. 359, Section 347.)

The District Court rendered its opinion on January 12, 1939, holding that petitioners could not tax the cotton in question. (R. 22.)

The District Court made and entered its judgment to that effect on March 4, 1939. (R. 23-25.)

Petitioners filed their notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit on May 4, 1939, from the judgment and order of the District Court. (R. 25-26.)

The judgment and decree of the Circuit Court of Appeals affirming the judgment and order of the District Court was made, filed and entered on June 12, 1940 (R. 51), and the opinion of the Court in connection with the said judgment and decree was filed on June 12, 1940, and appears in the record (R. 43-50) but has not, as yet, been reported.

(C) THE FACTS AND SPECIFICATIONS OF ERROR.

The facts and specifications of error are set forth in the accompanying petition for writ of certiorari and, in the interest of brevity, will not be repeated here.

However, we believe that it is proper that we point out herein that the present cause has been selected by the petitioners and respondent *as a test case* to determine whether a state or its political subdivisions may *levy and collect* a non-discriminatory *property* tax upon various commodities (cotton, prunes, raisins, etc.) situated within the jurisdictional boundaries of a state or its political subdivisions even though such commodities were, *prior to or after such levy,* pledged to the respondent as security for a loan made to the producers-owners of those commodities.

At the time the present cause was commenced various counties throughout the State of California had taxed to the producer-owner, cotton, prunes, raisins, etc. and would have effected collection of such taxes by a tax sale had not the respondent instituted the present action. By stipulation entered into by the legal representatives of the respondent and of those counties it was agreed that the tax sales for the year 1938 and subsequent years would be postponed pending a final determination herein.

The petitioners alone now have approximately $300,000 in taxes assessed against the producers of such commodities and are awaiting the outcome of this case before proceeding to effect collection of the

same by a tax sale. There are about fourteen (14) counties, other than petitioner, in the State of California also waiting, pursuant to the stipulation referred to, the decision of this Court.

It is also our understanding that practically every State in the Union has a similar problem and is looking to the decision of this Court in the instant matter to clarify their right to tax these commodities.

We also believe that it is appropriate that we set forth herein the history of the Commodity Credit Corporation, respondent, herein, to-wit:

Section 2 of Title I of the National Industrial Recovery Act of June 16, 1933 (48 Stats. 195 (hereinafter referred to as N.R.A.)) provided, in part, as follows:

> "(a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies * * * as he may find * * * necessary * * *.
>
> (b) The President may delegate any of his functions and powers under this title to such officers, agents and employees as he may designate or appoint, * * *.
>
> (c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section I has ended." (Appendix p. 9.)

The policy referred to by Section 2 of the Act, supra, is set forth by Section 1 of Title I of the Act as follows:

> "A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trades groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industry, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry, and to conserve natural resources."

Pursuant to Section 2(a) of the N.R.A. and to effectuate the policy referred to in Section 1 of that Act, the President, on October 16, 1933, issued *Executive Order No. 6340.* (Exhibit D, Appendix p. 36.) Said order purported to authorize the incor-

poration of the Commodity Credit Corporation (hereinafter referred to as the Corporation).

Attention is particularly called to the following language found in said executive order, to-wit:

> "* * * Now, therefore, under and by virtue of the authority vested in me by the National Industrial Recovery Act of June 16, 1933, it is hereby ordered that an agency, to-wit: A corporation, under the laws of Delaware, be created, said corporation to be named the Commodity Credit Corporation * * *"

On January 31, 1935, Congress purported to extend the life of the Corporation to April 1, 1937. (See Exhibit E, Appendix p. 40.)

On January 26, 1937, Congress purported to continue the existence of the Corporation until June 30, 1939. (See Exhibit F, Appendix p. 41.)

On March 13, 1939, Congress purported to extend the life of the Corporation to June 30, 1941. (See Exhibit G, Appendix p. 42.)

The Corporation has an authorized and paid in capital of $100,000,000. Under the provisions of the Act of March 8, 1938 (Public No. 442, 75th Congress, 52 Stat. 107, Appendix p. 10), the Secretary of the Treasury is required to make an appraisal of all of the assets and liabilities of the Corporation, as of March 31st of each year for the purpose of determining its net worth, and in the event such appraisal establishes a net worth of less than $100,000,000, the Secretary of the Treasury is required, on behalf of

the United States, subject to appropriation of funds therefor which is authorized by the Act, to restore the amount of such capital impairment. In the event the net worth of the Corporation, as of March 31 of any year, is in excess of $100,000,000, such excess is required to be deposited in the Treasury by the Corporation to be credited to miscellaneous receipts. (R. 5-6.)

Under the Act of March 8, 1938, supra, the Corporation is authorized with the approval of the Secretary of the Treasury, to issue and have outstanding at any one time, notes, bonds, debentures, and other similar obligations in the aggregate amount of not exceeding $900,000,000, such obligations when issued, pursuant to this Act, are fully and unconditionally guaranteed both as to principal and interest, by the United States. (R. 8.)

The Corporation is essentially a lending institution making loans to producers to finance agricultural commodities. The Corporation has made loans on cotton, corn, gum, turpentine, and gum rosin, wool and mohair, wheat, peanuts, tobacco, raisins, dates, figs, prunes, butter, hops and pecans.

The loans of the Corporation are functioned through certain designated loan agencies of the Reconstruction Finance Corporation, the managers of which act for the Corporation in approving notes secured by agricultural commodities which are submitted for direct loan from the Corporation, or which are tendered by lending agencies for purchase by the Corporation.

Loans on corn, cotton, wheat, raisins, wool and mohair are made under an arrangement whereby banks and other local lending agencies may make the loans to producers in the first instance on forms furnished by the Corporation. Such of them as meet the requirements of the Corporation are acceptable to it for purchase at par with accrued interest, if tendered on or before a fixed date. Generally, the agreement to purchase such notes is at par with accrued interest.

If local credit facilities are unavailable for any reason the Corporation makes direct loans in which case a note and loan agreement is executed by the producer with the Corporation as the payee, and mailed with the other prescribed documents for approval and acceptance to the loan agency of the Reconstruction Finance Corporation serving the district where the producer resides.

The note and loan agreement (Exhibit C) employed by the Corporation with respect to all loans which are made to individual producers provides, *inter alia,* "that the producers shall not be personally liable as long as he curtails production in accordance with the plan set forth by the Secretary of Agriculture".

Under Public Act No. 442 of the 75th Congress, approved March 8, 1938, the Secretary of Agriculture, the Governor of the Farm Credit Administration, and the Reconstruction Finance Corporation, were directed to transfer to the United States, all rights, title and interest in and to the capital stock of the Cor-

poration which each of them held at that time. (R. 9-10.)

Section 302 of the Agricultural Adjustment Act of 1938 (52 Stats. 31, 43, Exhibit A, Appendix p. 9) authorizes the Commodity Credit Corporation to make loans on agricultural commodities. We particularly call the Court's attention to subsections C and F of said Section 302, for the purpose of establishing that Congress primarily was attempting to control local production of cotton.

Under Section 401(a) (Public Resolution No. 20, 76th Congress, June 7, 1939), all of the activities of the Corporation were transferred to the Department of Agriculture.

We thus see that the Corporation created in 1933 pursuant to an executive order of the President of the United States (as purported to be authorized by Section 2 of the N.R.A.) with an initial capital of $3,000,000 has functioned and grown during the six years following to a large lending institution having a prescribed capital of $100,000,000 and having outstanding notes, bonds, debentures, etc., in the amount of $900,000,000. It has made loans to producers on virtually all types of agricultural commodities. It is apparent that the sole purpose of these loans was to control the local production of agricultural commodities grown within the states of the United States in an attempt to raise prices of agricultural commodities and thereby to increase the purchasing power of farmers throughout the United States.

(D) FOREWORD.

Prior to presenting our argument herein we deem it advisable to present a review of the creation and function of corporations which have been federally owned or chartered, to-wit:

Until 1932 the United States had little experience with government-chartered corporations and less with corporations owned or controlled by the Federal Government. Prior to the World War, the Panama (32 Stats. 481) and Alaska (38 Stats. 305) railroads represented the only federal excursions into the field of government-owned corporations. Greater experience has been had with corporations federally chartered—but not exclusively owned or controlled by the Federal Government; even here, however, that experience has been limited to the creation of banking and credit corporations designed for either general financial uses or for the supplying of more specialized financial facilities for agriculture. (First U. S. Bank, 1 Stats. 191, Second U. S. Bank, 3 Stats. 266, National Bank, 13 Stats. 99, Federal Reserve Bank, 38 Stats. 251, Federal Land Bank, 39 Stats. 362, 363, National Farm Loan Assoc., 39 Stats. 365, Joint Stock Land Bank, 39 Stats. 374.) In 1923 the Federal Farm Loan Act was amended to authorize the Federal Intermediate Credit Bank (42 Stats. 1454) and the National Agricultural Credit Associations. (42 Stats. 1461.)

The war brought a change in the character of governmental corporations, and the Federal Government now became not only the incorporator but also the

exclusive owner of a number of agencies which wartime development made necessary; the first of these was the Emergency Fleet Corporation, formed by the United States Shipping Board in pursuance of the authority granted to it in the original Shipping Act. (39 Stats. 729.) All of its stock was subscribed and paid for by the United States Shipping Board. Five additional wartime corporations were formed which have now gone out of existence, to-wit: the United States Grain Corporation (40 Stats. 276), War Finance Corporation (40 Stats. 506), the United States Housing Corporation (40 Stats. 594), U. S. Sugar Equalization Board (40 Stats. 276), and the United States Spruce Corporation. (40 Stats. 888.) (For a good review of these wartime corporations see *Skinner & Eddy Corporation v. McCarl,* 275 U. S. 1.) All of these instrumentalities were corporations entirely owned by the Federal Government.

After the war, only four government corporations were created until the year 1933. These were the Federal Intermediate Credit Bank (42 Stats. 145), Inland Waterways Corporation (43 Stats. 360), Reconstruction Finance Corporation (47 Stats. 5), The Federal Home Loan Bank (47 Stats. 725). Since March, 1933, some twenty government-owned or government-chartered corporations have been created. (See 48 Harvard Law Review 775; 14 North Carolina Law Review 234, 337; 21 Va. Law Review 465, 501; 4 Geo. Washington Law Review 161; 44 Yale Law Journal 326; 49 Harvard Law Review 1323.)

An entire group of corporations has sprung from the present agricultural program. The Farm Credit Act of 1933 authorized the organization of a Central Bank for Co-Operatives (48 Stats. 261), 12 Banks for Co-Operatives (48 Stats. 257), 12 Production Credit Corporations (48 Stats. 257), and any necessary number of Production Credit Associations. (48 Stats. 259.) These corporations are designed for the purpose of credit facilities for the production of harvesting of crops, feeding of livestock, etc. The Federal Farm Mortgage Corporation (40 Stats. 347) was formed to aid the Federal Land Banks in their farm debt refinancing program. We have already referred to the creation of the Commodity Credit Corporation, involved herein, which was created in 1933 pursuant to Executive Order 6340 (which order was purported to be authorized by Section 2 of the N.R.A.). The Federal Surplus Relief Corporation (Public Law No. 93, 73d Congress, Second Session, February 15, 1934, Executive Order No. 7150, August 19, 1935) was formed to bridge the gap between the destitute unemployed and surpluses of farm commodities. Its function is to purchase surplus food supplies and to distribute them to those on relief.

A second group of government corporations centers around the housebuilding and financing program. The most important of these is the Home Owners Loan Corporation authorized under the Home Owners Loan Act of 1933. (12 U. S. Code Ann. Section 1463.) This corporation was formed for long term loans at low in-

terest rates to those who could not otherwise retain their homes through meeting regular payments or by refinancing. The corporation is authorized to issue $200,000,000 in capital stock to the Treasury, and to issue bonds, the interest on which is guaranteed by the government, to enable it to make some $4,500,000,000 in loans. The Home Owners Loan Act also provides for the creation of a Federal Savings and Loan System (48 Stats. 645) to cooperate with local citizens in setting up loan associations in communities not now adequately served. The Federal Savings and Loan Insurance Corporation (48 Stats. 1256) has also been established under the authority of the National Housing Act. Its purpose is to insure the safety of accounts of investors and depositors in thrift and home financing institutions.

We have deemed it advisable to present this review because:

(1) We desire to show that prior to 1933 such corporations were created by an Act of Congress which defined their duties and functions;

(2) We desire to show that those corporations, prior to 1933, were engaged primarily in traditionally governmental functions, while thereafter corporations were created and have been engaged in functions that have hitherto been unknown to the Federal Government.

(3) We desire to show the Court the attendant consequences, if respondent's contentions are sustained, upon the taxing power reserved to

the respective states by the Federal Constitution when it is considered that more and more of these corporations are being created to carry on functions that were hitherto unknown to the Federal Government.

(E) SUMMARY OF ARGUMENT.

I. *The respondent was unlawfully created and is operating without constitutional authority.*

(a) The Act under which the Corporation was originally created unlawfully delegated legislative power to the President of the United States.

Section 2(a) of the National Industrial Recovery Act unlawfully delegated legislative power to the President of the United States and Section 2(b) of said Act purported to authorize the President to redelegate such power to certain agents, etc.

(b) Title I of the National Industrial Recovery Act, under which respondent was purportedly created, was invalidated.

(c) The respondent was not created to promote the fulfillment of the purpose "of Congress" in exercising a power granted to Congress by the Federal Constitution.

Since the Federal Government is one of limited powers, *Congress* has no general authority to create corporations save as means of carrying into execu-

tion some governmental power delegated to the Federal Government by the Constitution. The respondent *was created,* we submit, as one of the agencies designed by the Federal Government *to help control the local production of agricultural commodities.* This power, we believe, is not within any power delegated to the Federal Government. Therefore, respondent, not having been created as a means of effectuating a power delegated to Congress, was unlawfully created. If it is once established that the respondent does not have any lawful existence, it must necessarily follow that respondent has no lien on the cotton in question, and that petitioners may levy and collect a tax thereon.

(d) the subsequent Congressional Acts purporting to extend the existence of the respondent did not validate the creation of respondent, because:

(1) Those Acts are mere casual references and not Acts of ratification;

(2) Congress cannot ratify what it could not originally authorize;

(3) The alleged acts of ratification unlawfully delegated legislative power to administrative officers and agencies.

II. *Personal property pledged to the Commodity Credit Corporation does not "belong to" said Corporation.*

Under this point we are assuming, arguendo, that (1) respondent was lawfully created, and (2) that

petitioners cannot tax property belonging to the respondent.

No tax was assessed against respondent. The taxes in question were assessed against the producers of the cotton. The respondent did not acquire, by virtue of the pledge, any "property" in the cotton, as such. In the State of California the pledgee acquires a "special property" in the article pledged which amounts merely to the right to possession of the pledged property and the right to sell the same in case the pledgor defaults.

Therefore, the cotton pledged to the respondent does not "belong to" the Corporation.

III. *The petitioners may lawfully levy a tax upon cotton pledged to the respondent.*

Under this point it is assumed, arguendo, that (1) the respondent was lawfully created and is now operating under constitutional authority, and (2) the cotton in question belongs to respondent.

(a) The petitioners have the right to tax cotton situated in the County of Fresno on the first Monday in March, 1938 (March 7, 1938), and not pledged to the respondent.

Some of the cotton in question was not pledged to respondent until *after* "tax day" (first Monday in March). In California the status of property, for purposes of local taxation is determined as of that date. As to this cotton there can be no question of the petitioners' right to tax the

same along with any other property owned by other private individuals.

(b) Assuming, arguendo, that the Corporation *owns* cotton pledged to it, the petitioners may tax cotton that was so pledged on or before "tax day" in 1938, because:

(1) Congress has not expressly exempted the same from taxation and such immunity will not be implied;

(2) A non-discriminatory property tax does not unlawfully burden the United States.

IV. Personal property pledged to the respondent does not "belong to" the United States.

This question becomes pertinent only if this Court should decide (1) that the cotton taxed herein "belongs to" a validly created corporation, and (2) that the tax imposed by petitioners does *not* violate the implied immunity doctrine.

Respondent would contend that the cotton in question "belongs to" the United States within the purview of Section 1 of Article XIII of the Constitution of the State of California which exempts from taxation, all property "belonging to the United States".

It is our position that the respondent is an entity distinct from the United States, notwithstanding the fact all of its stock is owned by the United States. If the respondent owns a property interest in the cotton, as such, it does not follow that that interest "belongs to" the United States.

This Court has decided that if Congress has created a Corporation under the laws of a State, the Corporation has an existence separate and apart from the United States and is an entity separate and distinct from the United States.

V. The petitioners may legally collect a tax levied upon personal property by a tax sale without selling the property subject to the pledge lien acquired by the respondent.

Under this point it is assumed, arguendo (as the Circuit Court of Appeals apparently did), that (1) the respondent was validly created and therefore has a lien on the cotton in question, and (2) the petitioners lawfully imposed a tax on such cotton.

The question is then presented whether the petitioners may collect that tax at a "tax sale" without making that sale subject to respondent's lien on the cotton.

(We note that this question is material as to the cotton, pledged *after* "tax day" even if the Court should hold that the petitioners cannot tax cotton pledged to respondent *on or before* "tax day".)

It is petitioners' position that the personal property taxes are entitled to priority because:

(a) In California, taxes are inherently entitled to priority over *prior in time* private liens.

(b) Section 3716, Political Code, California, establishes a *statutory* priority for *personal property taxes* over private liens.

(c) Section 3716, Political Code of California, creates a priority for the *personal property tax lien* acquired by seizure pursuant to Section 3821 of the California Political Code.

(d) The lien acquired by respondent is in no better position than that acquired by a private individual.

Erie Rd. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, established the rule that in Federal Courts, except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the State. There is no constitutional or congressional provision that respondent can rely on herein, and therefore the lien of respondent is in exactly the same position as that held by a private individual.

(F) ARGUMENT.

I. THE RESPONDENT WAS UNLAWFULLY CREATED AND IS OPERATING WITHOUT CONSTITUTIONAL AUTHORITY.

The Circuit Court of Appeals assumed that there was, in existence, a lawfully created and existing Corporation which was capable of holding and which held a pledgee's lien on the cotton taxed by petitioners herein. We shall show that the Corporation was *not* lawfully created and that it has no legal existence, and therefore that respondent has no lien on the cotton involved herein and that the petitioners may *levy and collect* a tax thereon.

(a) The Act which purported to authorize the creation of the respondent unlawfully delegated legislative power to the President of the United States.

Section 2(a) of Title I of the National Industrial Recovery Act of June 16, 1933 (48 Stats. 195, hereinafter called N.R.A.), purported to authorize the President to create such Corporations as he might deem necessary to effectuate the purpose of the Act is disclosed by Section I of Title I of the Act. (See History of Corporation, Statement of Facts, supra.)

Section 2(b) of Title I of said act purported to authorize the President to redelegate almost illimitable powers conferred upon him to these corporate agents he was authorized to create.

We note that the respondent was not created *by Congress* as were the Corporations created prior to 1933 and referred to in the foreword herein, supra. On the other hand, Section 2(a) *purported to allow the President to create such agencies as he might find necessary to effectuate the policy of the N.R.A.*

Having this in mind, we ask the Court to note the following language:

> "It will be observed that the secretary is not required, but is permitted, if, in his uncontrolled judgment, the policy of the Act will so be promoted, to make agreements with individual farmers * * * upon such terms as he may think fair and reasonable." (*U. S. v. Butler,* 297 U. S. 1, 55.)

We submit that this amounted to an unconstitutional delegation of legislative power contrary to Sections

1 and 8 of Article I of the Federal Constitution.

See:

Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter v. U. S., 295 U. S. 495;
Field v. Clark, 143 U. S. 649;
U. S. v. Grimaud, 220 U. S. 506;
Hampton & Co. v. U. S., 276 U. S. 394;
Williamsport Wire Rope Co. v. U. S., 277 U. S. 551;
Blair v. Oesterlein Machine Co., 275 U. S. 220;
Heiner v. Diamond Alkali Co., 288 U. S. 502;
Mulford v. Smith, 307 U. S. 38;
Currin v. Wallace, 306 U. S. 1.

(b) Section 2 of Title I of N.R.A., which purported to authorize the creation of the respondent, fell with Title I of said Act.

The Executive Order No. 6340 (Exhibit D, Appendix p. 36), establishing respondent, expressly referred to Section 2 of Title I of N.R.A. as the authority creating the Corporation.

Title I of N.R.A. was invalidated by the following decisions:

Schechter v. U. S., supra;
Panama Refining Co. v. Ryan, supra.

See:

Alabama Power Co. v. Ickes, 302 U. S. 464, 473.

It follows that, inasmuch as Title I of the Act, which purported to authorize the creation of respondent, was declared unconstitutional, the Corporation was unconstitutionally created.

(c) The respondent was not created to promote the fulfillment of the purpose of Congress in exercising a power granted to Congress by the Federal Constitution.

The Tenth Amendment to the United States Constitution provides as follows:

> "Powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Waiving for the moment the question of unlawful delegation, it is our contention herein that Congress sought to delegate to the Commodity Credit Corporation the right to regulate, for the federal government, the local production of agricultural commodities.

The creation of the Corporation was part of a general scheme to achieve federal regulation of local agricultural production.

In *United States v. Butler,* 297 U. S. 1, the Court held that that scheme was an invasion of a power reserved by the Tenth Amendment of the Constitution to the States and to the people.

The Court clearly held that the control of local production of agricultural products was the objective of the Agricultural Adjustment Act of 1933. We submit that the Commodity Credit Corporation is and was merely one of the cogs in the machine which Congress purported to establish.

The Corporation does not merely offer advice, instructions, or financial aid, but, in extending the finan-

cial aid it is attempting to control local agricultural production and to fix local farm prices.

The National Industrial Recovery Act of 1933 and the Agricultural Adjustment Act of 1933 were part of a vision to achieve nation-wide economic recovery—the first by the control of industry and the latter by the control of agriculture; the ends to be accomplished through regulation by a central authority, in one case, the President of the United States, and the other, the Secretary of Agriculture.

The declared policy of Congress in the National Recovery Act and the Agricultural Adjustment Act of 1933 clearly discloses, as found by this Court, that its purpose was to control the local production of agricultural products. We submit that paragraphs 5 and 8 of the note and loan agreement (Exhibit C, Appendix p. 25) used by the Commodity Credit Corporation unquestionably show that was the unlawful purpose for which the Corporation was created. We also call attention to the provisions in Section 302 (C. & F.) of the A.A.A. of 1938, the purposes and policies of the N.R.A. and the A.A.A. of 1933, paragraph 3 of respondent's articles of incorporation, and Executive Order No. 6340. (See History of Corporation, pp. 22-27, supra, brief.)

This Court has held, many times, that local activities, such as the production of commodities by farmers, are not subject to Congressional control.

See

Chassaniol v. Greenwood, 291 U. S. 584;
U. S. v. Butler, 297 U. S. 1;

Utah Power & Light Co. v. Pfost, 286 U. S. 165;
Heisler v. Thomas Colliery Co., 260 U. S. 245;
Oliver Iron Mining Co. v. Lord, 262 U. S. 172;
Crescent Cotton Oil Co. v. Miss., 257 U. S. 129;
Kidd v. Pearson, 128 U. S. 1.

The *Schechter* and *Butler* cases, supra, clearly establish that Congress was not acting pursuant to its power to regulate commerce when it enacted the N.R.A. and the A.A.A. of 1933. Further, the *Butler* case clearly establishes that even if it purported to act under its power to regulate commerce Congress could not accomplish a purpose which would invade a right reserved to the various states.

We submit that the Corporation, not having been created as a means to effectuate or to carry out a power delegated to Congress, was created without lawful authority; that, therefore, it has no legal existence and accordingly any tax imposed upon a producer of cotton which has been pledged to the Corporation would not violate the implied constitutional immunity doctrine which grants exemption to certain types of federal instrumentalities from state taxation. Further, it cannot be said that there is any lien in existence which is entitled to priority over petitioners' tax claims.

See:
Helvering v. Gerhardt, 304 U. S. 405, 411 N.

It is our understanding that the only limitation upon the power of *Congress* to create instrumentali-

ties is that they promote in some degree the fulfillment of the purpose "of Congress" in exercising its powers.

See:

McCulloch v. Md., 17 U. S. 316, 409, 410;
Osborn v. Bank of the United States, 22 U. S. 738;
First Nat. Bank v. Fellows, 244 U. S. 416;
Smith v. Kansas City Title & Trust Co., 255 U. S. 180;
Graves v. O'Keefe, 306 U. S. 466;
Fed. Land Bank v. Crosland, 261 U. S. 374;
Rogers v. Graves, 299 U. S. 401;
Ashwander v. T. V. A., 297 U. S. 288, 8 Fed. Supp. 893, 895.

If, as in the case of respondent herein, a corporation was not created as a means of carrying into execution some governmental power delegated to the Federal Government by the Constitution, its creation and existence cannot be constitutionally justified.

Respondent, in the Circuit Court, asserted that its existence and operations could be justified as an exercise of the "fiscal powers". The respondent relies upon the various clauses of Section 8 of Article I (referring to revenue, finance and currency) as the basis for this alleged power. (*Norman v. Baltimore & Ohio R. Co.*, 294 U. S. 240, 303.)

However, the so-called fiscal power does not exist as an incidental necessary power if the power to which it is allegedly incidental is not delegated to Congress. (Control of local production.)

The respondent would avoid this obvious principle by arguing that the Corporation has the power to lend money to producers of cotton and, in order to preserve and protect these loans, it may curtail the production of commodities upon which the loans were made.

The same argument was presented to this Court in the *Butler* case, supra. (Government's Brief, pp. 241-262.) However, this Court, deeming that the essential purpose of the act there in question was to control local production of commodities refused to accept the argument. Here the essential and primary function of the respondent is not to loan money, but rather to invade a field reserved to the states. It is being used as a medium to acquire control of production of products. In the *Butler* case, supra, the Federal Government asserted that the A.A.A. of 1933 could be justified under the so-called "fiscal powers" to preserve the credit structure of the nation. However, this Court said that Congress could not, under the pretext of spending to promote the general welfare, invade rights reserved to the respective states. Here, as in the *Butler* case, the so-called fiscal power must be derived from the power to spend for the general welfare. It is also true that here, as in the *Butler* case, the Federal Government cannot, under the pretext of exercising "fiscal powers" derived from the general welfare clause, exercise a power reserved to the states by the Tenth Amendment.

The primary purpose of the respondent is not to loan money, but, as we have heretofore established, to

control local productive activity through the medium of loans which are made upon the condition that production is to be curtailed.

It is true that we have not questioned the right of the Federal Government to make loans to producers. But we do not in any way admit by what we have said herein that mere loaning, as such, can be justified under the general welfare clause, or any other delegated power. We have not chosen to make that argument herein because we feel that it is obvious that the loaning activities of respondent are merely a means used to effectuate its primary purpose, i. e., to act as a means of acquiring control of production. If the Federal Government has the power to loan money (without imposing conditions) as an exercise of their power to spend for the purpose of promoting the general welfare, we will be well on our way to a destructible union of destructible states. Heretofore, whenever any corporation (Bank of the United States, Federal Land Banks, War Finance Corporation) has been held to be constitutionally created, the decision has been based upon the theory that the lending of money was merely incidental to some lawfully delegated power which was being exercised. (*Smith v. Kansas City Title Co.,* 255 U. S. 180, 211; *McCulloch v. Maryland,* 4 Wheat. 316; *Ashwander v. T. V. A.,* 297 U. S. 288.)

The respondent is now asking this Court to hold that the Federal Government can invade a field reserved to the respective states on the theory (not accepted in the

Butler and *Schechter* cases) that it can spend money in aid of agriculture (by making so-called loans) and thereby promote the general welfare.

Counsel also asserted that the creation of the respondent may be justified as an exercise of the commerce power. The theory adopted by counsel is that production control can be justified on the principle (1) that the plenary power of Congress over commerce gives Congress the power to control such production, or on the principle (2) that its control is incidental to its power to control interstate marketing.

To counteract our reliance upon the articles of incorporation of respondent, the declared policy of the A.A.A. of 1933 and the N.I.R.A., the language of note and loan agreement, the provisions of Section 302 (C and F) of the A.A.A. of 1938, and Executive Order No. 6340, the respondent referred to Section 2 and Section 341 of the latter act. We admit that Sections 2 and 341 of the A.A.A. of 1938 disclose that *one* of the purposes of that act was to control interstate marketing of agricultural products which is within the commerce power granted to Congress (*Mulford v. Smith,* 307 U. S. 38, 47), but that purpose is only one of three purposes for which the A.A.A. of 1938 was enacted, i. e., soil conservation (Sections 102-104), production control (Section 302), and the marketing control. (Sections 311-355.)

Sections 311-314 of the A.A.A. of 1938 were upheld in the *Mulford* case because:

> "* * * The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. * * *" (p. 47.)

However, we ask the Court to note that we have established by reference to (a) pertinent statutes, (b) an executive order, (c) document creating the respondent and (d) document used by it in its business, that respondent *was* created solely for the purpose of controlling production. Respondent limits the acreage that may be planted or produced. Respondent imposes a penalty on those producers who do not comply in that it (1) will not loan to non-cooperators or (2) they will take a deficiency judgment against non-cooperators.

The *Mulford* case, supra, was dealing only with the marketing features of the Act, and not with production control provisions found in Section 302. It is obvious that the Court in the *Mulford* case was still of the opinion, as it was in the *Butler* case, that Congress does not have the power to control local productive activity, through the pretext of exercising a power delegated to Congress (general welfare or commerce power).

Also see:

Schechter Corp. v. U. S., 295 U. S. 495.

Counsel asserted in an attempt to avoid the compelling force of the *Butler* case, that the provisions of

the A.A.A. of 1933 did not purport to regulate commerce. Their reliance on this statement is not apparent when the declared policy of the Act is compared with that of the N.I.R.A. and A.A.A. of 1938. There can be no question but that Congress and its advisors believed that the A.A.A. of 1933 was adopted in the exercise of the commerce power. It is true that the Government did not attempt to argue the commerce power, but that was an afterthought forced upon them by the Schechter decision.

We do not contend that Congress cannot control interstate shipping or marketing. We are merely contending that Congress cannot control local production, as attempted herein, either directly or indirectly.

Every decision heretofore rendered by this Court supports our contention herein.

Respondent also attempted to justify its existence under the so-called "general welfare power" upon the theory that Congress has power to provide for the general welfare by providing appropriate agricultural credit measures and incidentally control local production.

At the outset we state that it is our understanding that there is no "general welfare power", but rather that the power to tax is limited by the general welfare clause.

This is the same argument that was presented to and refuted by the Court in the *Butler* case. The Court definitely held that Congress could not, under the pre-

text of spending for the general welfare, invade a field reserved to the states, i.e., production control.

In *Labor Board v. Jones & Laughlin,* 301 U. S. 1, the Court, at pages 30 and 40, approved and distinguished the *Schechter* and *Carter Coal* cases, supra.

We particularly call the Court's attention to the questions of the Court in the *Jones & Laughlin* case and counsel's answers thereto relative to this problem, which are reported in 301 U. S. 1, 738.

(d) The subsequent congressional acts purporting to extend the existence of the respondent did not validate its creation or existence.

Counsel for respondent apparently admitted that the respondent was unlawfully created, for they made no attempt to refute our contention in that regard in the Circuit Court of Appeals. Their whole argument was directed to *the alleged present* (1) existence (2) purposes and (3) functions of respondent.

Therefore, it now becomes necessary to determine if the *present* existence, purposes and functions of respondent are different from the *original* existence, purpose, and functions of the Corporation.

The President on October 16, 1933 (acting pursuant to purported power given by Section 2 of N.I.R.A.) allegedly authorized the creation of the Corporation by Executive Order No. 6340. (Exhibit D.)

Executive Order No. 6340 provided in part as follows:

> "* * * And whereas, in order, effectively and efficiently, to carry out the provisions of said Acts

> (A.A.A. of 1933 and N.I.R.A.) it is * * * necessary that a corporation be organized * * * to accomplish the purposes of said Acts. * * *"
>
> "Now, therefore, *under and by virtue of the authority vested in me by the National Industrial Recovery Act* * * * it is hereby ordered that an agency, * * * a corporation, * * * be created * * * to be named the Commodity Credit Corporation." (Emphasis added.)

On the 17th day of October, 1933, respondent filed its certificate of incorporation with the Secretary of State of the State of Delaware. (Exhibit B, Appendix, p. 15.)

The third paragraph of this certificate specified, *inter alia,* the following as the purposes of the corporation:

> (a) To effectuate the purposes of the A.A.A. of 1933 and N.I.R.A. and amendments thereto;
>
> (c) To cooperate in any plan which provides for reduction in the production of agricultural commodities;
>
> (d) To engage in any activity in connection with the production of agricultural products.

(The third article of the certificate of incorporation has never been amended in any respect material herein.)

Section 2(c) of N.I.R.A. provided that all agencies created thereunder were to cease to exist on June 15, 1935.

We believe that we have heretofore established that the Corporation was not constitutionally created. Let us now observe what transpired after October 17, 1933.

On January 31, 1935, Congress purported to extend the life of the Corporation to April 1, 1937. (Exhibit E, Appendix, p. 40.)

(We note that the *Schechter* and *Butler* cases, supra, had not been decided as of this date.)

On January 26, 1937, its life was purportedly extended until June 30, 1939. (Exhibit F, Appendix, p. 41.)

On March 13, 1939, Congress purported to extend its life to June 30, 1941. (Exhibit G, Appendix, p. 42.)

On February 16, 1938 Congress enacted the A.A.A. of 1938. (52 Stats. 31.) This act is, contrary to respondent's contention, pertinent herein, because the record discloses that "* * * in the case of cotton on which the Commodity Credit Corporation had made such advances to producers between the 7th day of March, 1938, and the 21st day of June, 1938, the advances were in some instances made before the levy of assessment. * * *" (R. 15.) In other words, the respondent did make loans on the cotton in question after February 16, 1938.

Title I of N.I.R.A. was not amended after 1933 and the A.A.A. of 1933 was not amended in any respect material herein.

The respondent contends that the present existence of the Corporation is different from its original existence on the theory that the 1935, 1937 and 1939 acts, supra, which extended its existence to June 1941, were, in effect, acts of ratification. We believe that this argument is unsound because:

(a) Those acts are mere casual references and not acts of ratification;

Isbrandtsen-Moller Co. v. U. S., 300 U. S. 139, 147, 148;

(b) Congress cannot ratify what it could not originally authorize;

Swayne & Hoyt, Ltd. v. U. S., 300 U. S. 297;
U. S. v. Butler, 297 U. S. 1, 78;

(c) The so-called acts of ratification constitute an unlawful delegation of legislative power to administrative officers and agencies;

Panama Refining Co. v. Ryan, 293 U. S. 388;
Mulford v. Smith, 307 U. S. 38.

The corporations (prior to 1933) referred to in our foreword, supra, have all been created by acts of Congress which specifically mentioned the policy and standards of the Corporation created and also expressly outlined its corporate organization.

The respondent further contends that the present purposes and functions of the Corporation are different from those purposes and functions which were originally given to the Corporation.

We do not see how this argument can be sustained when it is noted that:

(a) The articles of incorporation of respondent have never been materially changed;

(b) The acts, whose purposes it was intended to effectuate, have never been materially amended;

(c) The A.A.A. of 1938 is not an amendment of the A.A.A. of 1933 or the N.I.R.A. but rather an amendment of the Soil Conservation and Domestic Allotment Act. The A.A.A. of 1938 had three purposes, to-wit:

(1) Soil conservation (Sections 102-104);

(2) Control of local agricultural production through loans made by the respondent upon the condition that production be curtailed (Section 302);

(3) Regulation of interstate marketing of agricultural products. (Sections 311-355.)

The second purpose referred to above is merely a continuation of its original purpose. (See paragraph 8 of Exhibit C, Appendix, p. 34.)

When we consider (1) the respondent was created to effectuate the purposes and policies of the A.A.A. of 1933 and the N.I.R.A. (supra p. 7 and Appendix, p. 9) which have been declared not to be within the delegated powers of Congress (*Schechter* and *Butler* cases, supra); (2) the provisions of the note and loan agreement (paragraphs 5 and 8, Appendix, pp. 32, 34)

which clearly show the unlawful condition attached to the loan; (3) the language of Section 302 (C. and F.) (Appendix, p. 9); (4) the articles of incorporation (Appendix, p. 15), and (5) Executive Order No. 6340 (Appendix, p. 36), there cannot be any question but that the present and original purposes and functions of the respondent are identical. The history of the respondent and congressional acts clearly disclose the continuation of the original unlawful purpose of the corporation.

The provisions of the note and loan agreement and Section 302 of the A.A.A. of 1938 are not, as contended by respondent, inconsistent. Both of them clearly disclose the intention of the respondent to curtail local production of agricultural commodities; the former by waiving a deficiency if cooperation is given and the latter by refusing to make a loan unless cooperation is promised. Section 302(h) would allow a deficiency to be taken if the promise of cooperation was made in bad faith.

II. PERSONAL PROPERTY PLEDGED TO THE RESPONDENT DOES NOT "BELONG TO" THE RESPONDENT.

We are assuming, arguendo, herein, that (1) the respondent was lawfully created, and (2) that petitioners cannot tax property belonging to the respondent.

The taxes in question were all levied on personal property located in Fresno County, California, on the first Monday in March, 1938. They were assessed in

the name of "Unknown" *producers* of the cotton and not in the name of the respondent or the United States. *There was no tax assessed against* the respondent or the United States.

Section 8 of Article XIII of the Constitution of the State of California requires that the legislature shall by law require the taxpayer to provide an annual statement to the county assessor setting forth all property in his possession or control as of the first Monday in March. Said section provides as follows:

> "The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March."

Section 3628 of the Political Code of the State of California, the legislative enactment called for by Section 8 of Article XIII, supra, provides as follows:

> "Except as otherwise provided in the Constitution of this State all taxable property shall be assessed in the county * * * in which it is situated. * * * The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation * * * and must assess such property to the persons by whom it was *owned or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding* * * *." (Emphasis ours.)

It has been determined that Section 8 of Article XIII and Section 3628 of the Political Code clearly designate the time *when the taxable status of property, in California, becomes fixed.*

See

Dodge v. Nevada National Bank, 109 Fed. Rep. 726, at pp. 731-732;

East Bay Municipal District v. Garrison, 191 Cal. 680, 690, 218 Pac. 43.

Section 3716 of the Political Code of the State of California gives to a tax the effect of a judgment against the owner of the property. Section 3821 of the Political Code of the State of California authorizes the assessor of a county to seize and sell *any* personal property owned by the person against whom the tax was assessed.

We point out to the Court that the tax was not levied on any interest or property which the Corporation may claim to have in the cotton. On the other hand the assessment was made on the producers and owners of the cotton on the first Monday of March, 1938. We further contend that the levy of said assessment did not impede any activity of the federal government. It is our position that the Corporation did not acquire by virtue of the pledge any "property" in the cotton, as such. It did, we admit, acquire a "special property" which amounts merely to the right to possession of the pledged property and the right to sell the same in case the pledgor does not repay his debt. This "special property" was not taxed herein.

In support of our contentions herein we call the Court's attention to the following statutory provisions of the State of California and decisions of various Courts.

Section 2986 of the Civil Code of the State of California provides as follows:

> "Pledge is a deposit of personal property by way of security for the performance of another act."

Section 2987 of the Civil Code of the State of California provides as follows:

> "Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge."

In *City Bank Farmers' Trust Co. v. Bowers,* 68 Fed. (2d) 909, the Court said, at page 913:

> "* * * The interest of a pledgee has indeed somewhat baffled common lawyers, but it is usually said that 'title' remains in the pledgor, and that the pledgee has only a 'special property'; (citing cases) * * * The pledgee in substance has no more than a power to sell the pledge upon default and to recoup * * *."

In *Bank of America etc. Ass'n v. Figueroa,* 218 Cal. 281, 286 (22 Pac. (2d) 712), the Court said:

> "* * * As pledgee of the security the Bank of America did not acquire title thereto * * *."

In *St. Paul Fire & M. Ins. Co. v. Garza County W. & M. Ass'n,* 93 Fed. (2d) 590, 592, the Court said:

"* * * Its claim that as pledgee the Commodity Credit Corporation is owner will not do * * *."

"In *Arcola Sugar Mills Co. v. Burnham,* 5 Cir., 67 Fed. (2d) 981, we pointed out that, while a pledgee has some of the rights of an owner, he is, until in the manner prescribed in the pledge he has become the owner, still a pledgee."

In 21 *Ruling Case Law,* at pages 649, 650, 651, it is said:

"With regard to the respective rights of the parties to a contract of pledge it is well settled that the general property in the thing pledged remains in the pledgor (citing Brewster v. Hartley, 37 Cal. 15, and Anderson v. Pacific Bank, 112 Cal. 598, 44 Pac. 1063), and only a special property vests in the pledgee. (Citing California cases.) While he has the right to retain the property pledged until the debt for which it was pledged is fully satisfied or has been otherwise discharged the pledgee acquires no interest in the property except as a security for his debt * * * The general property in the pledge remains in the pledgor after as well as before default. * * *"

Also see:

Talty v. Freedman's Savings & Trust Co., 93 U. S. 321, 324;

Yeatman v. Savings Institution, 95 U. S. 764, 766.

In *People v. Kempner,* 139 N. Y. S. 440, 443, the Court defines "special property" which is acquired by the pledgee as being the right to possession of the

pledged property and the right to sell the pledged property in case of a default on the part of the pledgor.

In *Rissman v. National Thrift Corporation,* 139 Cal. App. 447, 34 Pac. (2d) 230, the Court cited with approval the case entitled *Simansky v. Clark,* 147 Atl. 205 (Me.), wherein the Supreme Court of the State of Maine defined the respective rights of a party to a pledged contract as follows: The general property remains in the pledgor and the pledgee does not acquire any interest in the pledged property, save as security for the payment of his debt.

In 21 *California Jurisprudence,* at pages 328, 329, 330, it is said:

> "The general rule that notwithstanding any agreement to the contrary a lien or a contract for a lien transfers no title to the property subject to the lien, is applicable to pledges. While a pledgee has a special property or interest in a pledge, the title or general property remains in the pledgor * * * The pledgee has a special property in a pledge which entitles him to possession until discharge of the obligation secured, and to protect which he may maintain detinue, replevin or trover against anyone who has no higher equitable or other superior right. * * *"

In 16 *California Jurisprudence,* page 315, it is said:

> "* * * A mortgage lien is not an interest in the property, but a mere lien thereon. Therefore, one having naught but a mortgage lien may not quiet title as against the owner of the legal title."

In *Robinson v. Raquet,* 1 Cal. App. (2d) 533, 544, 36 Pac. (2d) 821, the Court said:

> "* * * It has been repeatedly held that where personal property is pledged the general property and the title remain in the pledgor, subject only to a lien in favor of the pledgee for the amount of his debt."

Also see:

White v. Ross, 36 Cal. 414, 428;

Brewster v. Hartley, 37 Cal. 15, 25, 99 Am. Dec. 237;

Cross v. Eureka Lake etc. Canal Co., 73 Cal. 302, 306, 14 Pac. 885, 2 Am. St. Rep. 808;

Sparks v. Caldwell, 157 Cal. 401, 109 Pac. 276;

People v. Robinson, 107 Cal. App. 211, 220, 290 Pac. 470;

Tracy v. Stock Assur. Bureau, 132 Cal. App. 573, 579, 23 Pac. (2d) 41;

Civil Code, Section 2888.

In defining the rights of parties under a pledge we realize that the Courts have indulged freely in the use of words; but nevertheless, upon a careful scrutiny and thorough consideration of the authorities, we submit that the Courts consistently hold that no interest is acquired by the pledgee in the pledged property, as such, that is to say, no interest amounting to *ownership* in the property is acquired.

See:

Cottonwood-Anderson Irrigation Dist. v. Klukkert, 13 Cal. (2d) 191, 88 Pac. (2d) 685;

State Land Settlement Board v. Henderson, 197 Cal. 470, 480, 241 Pac. 560;

R.C.A. Photophone, Inc. v. Huffman, 5 Cal. App. (2d) 401, 42 Pac. (2d) 1059;

San Diego v. Davis, 1 Cal. (2d) 145, 33 Pac. (2d) 827.

Obviously, therefore, inasmuch as the petitioners are not subjecting to taxation the "special property" of the Corporation, the doctrine of constitutional implied immunity is not applicable; and accordingly, it logically follows that the cotton, which is otherwise taxable, does not become non-taxable because the Commodity Credit Corporation, an alleged instrumentality of the federal government, has assumed the relationship of pledgee to the cotton. In other words, the petitioners are not attempting to collect taxes on any property "belonging to" the respondent.

The Court is bound by the statutory and case law of the State of California which establishes that a pledgee of tangible personal property does not acquire any interest in pledged property, as such.

See:

Erie Railroad Co. v. Tompkins, supra.

Once it is determined by this Court that the Corporation did not acquire any property in the cotton as such, the Court must, regardless of its opinion on the other points raised herein, uphold the right of the appellants to levy the tax in question. The tax would then be held to be imposed upon property of a private individual located within the jurisdiction of the County

of Fresno, State of California, and there could not possibly be any burden imposed upon the Corporation or the United States.

III. THE PETITIONERS MAY LAWFULLY LEVY A TAX UPON COTTON PLEDGED TO THE RESPONDENT.

We are assuming, arguendo, that (1) respondent was lawfully created, and (2) is now operating under constitutional authority, and (3) that the cotton, taxed by petitioners herein, belongs to the respondent.

The question is then presented whether the petitioners could lawfully impose a *non-discriminatory property tax* upon that cotton which was situated in the County of Fresno on the first Monday in March, 1938, i.e., March 7, 1938, (*tax day*).

At the outset we wish to call the Court's attention to the fact that some of the cotton in question was not *pledged* to the respondent and the loans thereon were not made until *after* "tax day". Therefore, there can be no question as to petitioners' right *to tax* any cotton under those circumstances. The question is presented only as to that cotton *pledged before* or on "tax day".

In *Pitman v. H. O. L. C.*, 308 U. S. 21, 60 S. Ct. 15, 18, this Court said:

> "We assume here, as we assumed in Graves v. New York ex rel. O'Keefe, 306 U. S. 466, that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the congressional power and that the activities of the Corporation through which the national government lawfully

> acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments."

In other words, the Court did not decide the question presented herein. However, as we shall hereinafter attempt to show, the logic and reasoning adopted by the Court in that case strongly indicate that if the question involved herein had been presented in that case, it would have been decided as contended by petitioners herein.

The federal government and corporations created under state laws are, it must be noted, separate and distinct entities.

> *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U. S. 381, 59 S. Ct. 516;
>
> *U. S. Shipping Board Emergency Fleet Corp. v. Wood*, 274 Fed. 893, 899, 900, 901; aff'd 258 U. S. 549, 570;
>
> *U. S. v. Marxen*, 307 U. S. 200, 203, 59 S. Ct. 811, 813.

(a) Immunity from state taxation will not be implied.

In *Graves v. O'Keefe*, 306 U. S. 466, 479, 59 S. Ct. 595, 598, the Court established the following test in determining whether a federal instrumentality was exempt from state taxation:

> "* * * Congress has given no information for any purpose either to grant or withhold immunity from State Taxation of the salaries of the Corporation employees, *and the Congressional intention*

is not to be gathered from the Statutes by implication. See C. F. Baltimore National Bank v. State Tax Commissioner, 297 U. S. 209 * * *." (Emphasis added.)

Public Act No. 442 of the 75th Congress (approved March 8, 1938, 52 Stats. 108 (Appendix p. 14), provides, in part, as follows:

> "Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from federal, state, municipal and local taxation. (Except surtaxes, estate, inheritance, and gift taxes.) The Commodity Credit Corporation, including its franchise, its capital, reserves and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, County, municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to state, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

It is to be noted that counsel for respondent conceded, as they must, that neither this or any other congressional act expressly exempts the securities held by the respondent for repayment of its loans from state taxation.

We submit that *Graves v. O'Keefe,* supra, *Baltimore Natl. Bank v. State Tax Commisioner,* 297 U. S. 209, *Helvering v. Gerhardt,* 304 U. S. 405, 411 N, and *Tradesmen's Nat'l Bank v. Oklahoma Tax Commissioner,* ..... U. S. ....., 60 S. Ct. 688, 691, establish the principle that immunity of federal instrumentalities from state taxation will not be implied.

In passing we note that *Helvering v. Gerhardt,* supra, laid down as a second test *the power of Congress to create the instrumentality.* We are assuming, arguendo, under this point that the respondent meets that test. However, see Point I, supra.

(b) The tax imposed by petitioners herein does not unlawfully burden the United States.

It is our position that (1) in the absence of express exemption a federal corporation created under the laws of a state (2) having purposes other than the government's is not immune from (3) a non-discriminatory property tax unless (4) it can show that the tax will burden the United States.

At pages 480, 481 of the *O'Keefe* case, it is said:

> "* * * The present tax is a non-discriminatory tax on income applied to salaries at a specified rate. It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds and not from

> the funds of the government, either directly or indirectly. The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable (citations), *and the only possible basis for implying a 'constitutional immunity' from state income tax of the salary of an employee of the national government or of a governmental agency is that the economic burden of the tax is in some way passed on so as to impose a burden on the national government tantamount to an interference by one government with the other in the performance of its functions.* * * *'' (Emphasis added.)

Also see

Utah v. Van Cott, 306 U. S. 511.

The fact that the expenses of the one government might be lessened if all those who dealt with it were exempt from taxation by the other was not thought to be an adequate basis for tax immunity in the following cases:

Metcalf and Eddy v. Mitchell, 269 U. S. 514;
Burnett v. Jergens Trust, 288 U. S. 508;
James v. Dravo Contracting Co., 302 U. S. 134;
Helvering v. Mountain Producers Corporation, 303 U. S. 376.

It must be remembered that the tax which the petitioners have levied upon the cotton in question was not imposed upon the respondent but upon the producers of the cotton. *During the course of this litigation some producers have repaid the Commodity Credit Corporation.* It is inconceivable to us that any

Court would hold that the petitioners cannot tax cotton which is physically located within its boundaries and has a taxable status on the first Monday in March merely because the Corporation has made a loan to the producer of the cotton and as security therefor has received a pledge of the cotton. It may well happen that on the day before the first Monday in March of any particular year the producer of cotton could take a loan from the Corporation and pledge the cotton as security therefor and on the day after the first Monday in March repay that loan to the Corporation and the crop (which will receive the protection of the County of Fresno throughout the following ensuing year and for which protection other property within that community has to pay its share of governmental expense by paying taxes on such property) will escape its share of the tax burden imposed by the petitioners for rendering protection to all property and owners thereof within its boundaries. We submit that the implied immunity doctrine was never intended to be extended that far. Assuming for the moment, that the petitioners in levying a tax upon the producer of the cotton, is to some extent levying a tax upon property belonging to the Commodity Credit Corporation we submit that the imposition of that tax in nowise constitutes an unlawful burden upon the United States so as to bring the tax within the prohibited limits of the implied immunity doctrine.

In *United States Spruce Production Corporation v. Lincoln County, et al.*, 285 Fed. 388, 390, 391, it is said:

> "The cases seem to be uniform in support of the principle, which is concretely stated in Thomson v. Union Pacific Rd., 9 Wall. 579, 591 (19 L. Ed. 792), in the following language: 'We fully recognize the soundness of the doctrine that no state has a "right to tax the means employed by the government of the Union for the execution of its powers". But we think there is a clear distinction between the means employed by the government and the property of the agents employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means. * * *'."

The language of the headnote in *Railroad Co. v. Peniston,* 85 U. S. 5, is pertinent:

> "The exemption of agencies of the Federal Government from taxation by the states is dependent not upon the nature of the agents, nor upon the mode of their constitution, nor upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or hinder the efficient exercise of their power."

In *Clallam County v. U. S.,* 263 U. S. 341, 344, 345, it is said:

> "* * * The State claims the right to tax on the ground that taxation of the agency may be taxation of the means employed by the government and invalid upon admitted grounds, but that taxation of the property of the agent is not taxation of the means. We agree that it 'is not always, or

generally, taxation of the means', as said by Chief Justice Chase in Thomson v. Pacific Railroad, 9 Wall. 579, 591. But it may be, and in our opinion clearly is when as here not only the agent was created but all the agent's property was acquired and used, for the sole purpose of producing a weapon for war. This is not like the case of a corporation having its own purposes as well as those of the United States and interested in profit on its own account. The incorporation and formal erection of a new personality was only for the convenience of the United States to carry out its ends. *It is unnecessary to consider whether the fact that the United States owned all the stock and furnished all the property to the corporation taken by itself would be enough to bring the case within the policy of the rule that exempts property of the United States* * * * Van Brocklin v. Tennessee, 117 U. S. 151. *It may be that if the United States saw fit to avail itself of machinery furnished by the State it would not escape the tax on that ground alone.* But when we add the facts that we have recited we think it too plain for further argument that the tax could not be imposed. See United States Spruce Production Corporation v. Lincoln County, 285 Fed. 388; United States v. Coghlan, 261 Fed. 425; King County v. United States Shipping Board Emergency Fleet Corporation, 282 Fed. 950. We answer the second question, No." (Emphasis added.)

The United States Supreme Court in its recent decisions rendered during its October term, 1938, clearly indicated that it is now of the opinion that the mere fact there exists an instrumentality of the federal

government is not conclusive of the question whether the implied *constitutional* immunity doctrine prevents taxation by a state of that instrumentality. The Court now requires proof of an actual burden upon the national government which interferes with the operation of an essential governmental function. Assuming as we have on this point that the Commodity Credit Corporation did "acquire some property" in the cotton in question herein, we fail to see how a local tax on the actual value of the cotton could possibly burden the United States. A nondiscriminatory tax of this nature must be borne equally by all property located within the boundaries of a taxing agency. Unless this doctrine of implied immunity is fairly construed we can see that the taxing powers of the various states in the Union will be materially crippled by virtue of the present tendency of the national government to create more and more corporations and to extend to them functions which were hitherto unknown to the federal government. The petitioners in taxing this property did not necessarily tax the means adopted by Congress to effectuate a power (which we will assume to exist) delegated to the federal government. As previously pointed out, taxation of the means is that which is prohibited and not the taxation of property, unless taxation of the property is also taxation of the means.

The effect upon the state and its political subdivisions if respondent's theory of immunity is upheld, is well expressed by Chief Justice Chase in *Thomson v. Union Pacific Rd. Co.*, 9 Wall. 579, 591, where he said:

"We perceive no limits to the principle of exemption which the complainant seeks to establish. It would remove from the reach of state taxation all the property of every agent of the government. Every corporation engaged in the transportation of mails or of government property of any description, by land or water, or in supplying materials for the use of the government, or in performing any service of whatever kind, might claim the benefit of the exemption. The amount of property now held by such corporation, and having relations more or less direct to the National government and its service, is very great. And this amount is continually increasing; *so that it may admit of question whether the whole income of the property which will remain liable to State taxation, if the principle contended for is admitted and applied in its fullest extent, may not ultimately be found inadequate to the support of the State government.* * * *" (Emphasis added.) (*Government had a mortgage in this case.*)

Further, at pages 590, 591, the Court said:

"We do not think ourselves warranted, therefore, in extending the exemption established in the case of McCulloch v. Md. beyond its terms. *We cannot apply it to the case of a corporation deriving its existence from state law exercising its franchise under state law, holding its property within state jurisdiction and under state protection.* * * *" (Emphasis added.)

During the last seven years there have been created many corporations to perform functions hitherto unknown and unrelated to the federal government, each

corporation lending its money to citizens residing in the various states of the Union on all types of commodities, businesses and property. If the doctrine of immunity set forth by the respondent is upheld by this Court it may well cause the various states of the Union to ponder whether the remaining property within their boundaries can sustain the resulting burden placed upon it in sustaining the operation of those governments. It may well be that the various states may be forced to limit their governmental activities and thus the national government will indirectly be responsible for breaching the constitutional guarantee given to every state that it shall maintain a republican form of government. *The denial of the power to impose a nondiscriminatory tax involves the power to destroy.*

In *National Bank v. Commonwealth,* 9 Wall. 353, 362, the Court observed that:

> "The principle we are discussing (tax exemption) has its limitations, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the Federal Government are only exempted from state legislation, so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states."

Again, when California levied taxes upon a railroad built largely with federal funds, performing federal services, the Court while denying the right of the state to tax the franchise, upheld the tax upon the property of the railroad and said:

> "There is a clear distinction between the means employed by the government and the property of the agent employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agency is not always, or generally, taxation of the means."

In *Union Pacific Rd. Co. v. Peniston,* 85 U. S. 5, at p. 30, the Court said:

> "It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason also inhibited by the constitution. To hold that would be to deny to the States all powers to tax person or property."

In those cases where the taxation of the property of the agent has been upheld it has been upheld because it was not regarded as a "tax" upon the "means" employed by the government in carrying out legitimate purposes.

In *McCulloch v. Maryland,* supra, we find that the fundamental basis upon which the Court relied, in denying a state the right to levy a tax upon bank notes of a national bank, was that the tax *was discriminatory in nature* and was primarily designed to destroy an instrumentality of the federal government which was created as a means to serve an essential governmental power.

In the Circuit Court of Appeals counsel for respondent stated, in their brief (p. 31), that:

> "Payment of a tax, which neither in terms nor in fact marks the Government transaction as the object of the levy, will not bring the operations of the Government to a halt. For this reason the United States as amicus curiae urged in James v. Dravo Contracting Co., 302 U. S. 134, that a gross-receipts tax upon the federal contractor should be sustained, even though the full amount of the tax burden would ordinarily be passed on to the Federal Government."

The payment of the tax involved herein does not, in terms or fact, mark the government transaction as the object of the levy. Therefore the fact that the respondent may be forced to pay the producer's tax and seek reimbursement therefor is immaterial.

James v. Dravo Contracting Co., supra;

Graves v. O'Keefe, supra;

Buckstaff Bathhouse Co. v. Commr., ... U. S. ....., 60 S. Ct. 279;

Stone v. Interstate Natural Gas Co., 103 Fed. (2d) 544, 549, ... U. S. ..... (12/11/39).

We submit that *Graves v. O'Keefe* is controlling herein.

We ask why should there be any distinction between an individual, a natural person, and a corporation, an artificial person. In the *O'Keefe* case an individual was engaged in federal functions, just as we are assuming herein that the respondent is engaged in federal functions. We believe that the logic and reasoning

of the *O'Keefe, Van Cott* and *Gerhardt* cases are equally applicable to the respondent herein; ergo, Congress not having expressly granted immunity, none will be applied.

We submit that:

(1) Subject to the "principle" stated in *Natl. Bk. v. Commonwealth,* supra, and in many later cases Congress has power expressly to exempt a lawfully created federal corporation from state taxation;

(2) That persons, whether natural or artificial, engaged in carrying out governmental functions are not entitled to the same *constitutional* immunity from state taxation as that adhering to the national government;

(3) That persons, whether natural or artificial, engaged in carrying out governmental functions are not immune from state taxation unless Congress has expressly granted them exemption or, when Congress is silent, the imposition of the particular tax in question will unlawfully burden the United States.

The record in the instant matter will not support a claim that the particular tax in question burdens, in any way, the United States.

We therefore contend that the petitioners have the right to levy and collect the tax involved herein without regard to the alleged interest of the respondent in the cotton in question.

IV. PERSONAL PROPERTY PLEDGED TO THE RESPONDENT DOES NOT "BELONG TO" THE UNITED STATES.

The question becomes pertinent only if this Court should decide (1) that respondent was validly created, and (2) the cotton belongs to it, and (3) that petitioners' tax does not violate the "Implied Immunity Doctrine".

It is our contention that the cotton in question does not "belong to" the United States within the purview of Section 1 of Article XIII of the Constitution of California and Section 3607 of the Political Code which in effect provide that property belonging to the United States is exempt from local property taxation.

We contend that the Corporation and the United States are separate and distinct entities.

See:

Keifer & Keifer v. Reconstruction Finance Corp., supra;

U. S. Shipping Board Emergency Fleet Corp. v. Wood, supra;

U. S. v. Marxen, supra.

While we may assume, arguendo, that some "property" in the cotton "belongs to" the respondent, we submit that none of it "belongs to" the United States within the purview of Section 1 of Article XIII of the California Constitution.

V. THE PETITIONERS MAY LEGALLY COLLECT A TAX LEVIED UPON PERSONAL PROPERTY, BY A TAX SALE, WITHOUT SELLING THE PROPERTY TAXED SUBJECT TO THE LIEN ACQUIRED BY THE RESPONDENT.

Under this point it is assumed, arguendo (as the Circuit Court of Appeals apparently did), that (1) the respondent was validly created and therefore has a lien on the cotton in question, and (2) that the petitioners lawfully imposed a tax on such cotton.

(a) Personal property taxes, in California, are inherently entitled to priority over PRIOR IN TIME private liens.

It is our first contention that a tax "ex proprio vigore" is entitled to priority in payment over any preexisting private lien holder.

See:

California Loan & Trust Co. v. Weis, 118 Cal. 489; 50 Pac. 697;

O'Dea v. Mitchell, 144 Cal. 374, 381, 77 Pac. 1020, 1022;

Woodil & Hulse Elec. Co. v. Young, 180 Cal. 667, 669, 670, 182 Pac. 422, 424;

San Mateo County Bank v. Dupret, 124 Cal. App. 395, 396, 12 Pac. (2d) 669, 670.

The case relied upon by the Circuit Court, i.e., *Guinn v. McReynolds,* 177 Cal. 230, 232, 170 Pac. 421, 422, is in conflict with the decisions which we have heretofore cited.

(b) Section 3716 of the California Political Code gives personal property taxes a statutory priority over private liens.

Assuming, arguendo, that taxes are not inherently entitled to priority to submit that Section 3716 of the California Political Code creates a statutory priority.

The Circuit Court of Appeals failed to discuss or answer this contention. Its decision is limited to two points, i.e., (1) taxes are not inherently entitled to priority, and (2) personal property taxes are not a lien on the property taxed.

It is fundamental that a sovereign government may establish priority for a tax even though it does not make the tax a lien on the property taxed.

The federal government has two statutes that clearly illustrate this point.

Sections 3670 and 3671 of the Internal Revenue Code (formerly Revised Statutes 3186) provide for a lien for taxes and give it priority under certain circumstances.

Section 3466 (31 U. S. C. 191) of the Revised Statutes, on the other hand, establishes priority for federal taxes, under certain circumstances, irrespective of a lien.

See

New York v. Maclay, 288 U. S. 290;
Spokane Co. v. U. S., 279 U. S. 80;
U. S. v. Oklahoma, 261 U. S. 253.

We submit that Section 3716, Political Code, supra, establishes a priority for personal property taxes in California in the same manner that Section 3466, Revised Statutes, establishes priority for federal taxes. (Of course Section 3716 does not limit the priority to cases of insolvency, etc.) *Neither priority is dependent upon a lien.*

In *California Loan and Trust Co. v. Weis,* 118 Cal. 489, 494, 495, the Court said:

"'Sec. 3716. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.'

"After further provisions for the sale of the real property for all such delinquent taxes, it is provided:

"'Sec. 3788. The deed conveys to the grantee the absolute title to the land described therein * * * free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale.'

"No distinction is made by these laws between the lien which exists upon the land for the tax on personalty and the lien which exists for the tax upon the land itself. 'Every lien' created by this title remains until the taxes are paid or the property sold.

* * * * * * *

"It is held in Eaton's Appeal, 83 Pa. St. 152, that a statute which declares that a tax shall continue a lien 'until fully paid and discharged', ex proprio vigore makes the lien superior to that of a judgment obtained before the tax is levied. In this State we not only have language of similar import in Section 3716 of the Political Code, but that language is aided so as to remove the need of interpretation by Section 3788, which provides that the deed conveys the absolute title free from all encumbrances."

We submit that if the following language of Section 3716, Political Code, establishes priority for real property tax lien, to-wit:

> "* * * and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; * * * nor the lien removed *until taxes are paid on the property sold for the payment thereof*" (*Weis* case, supra), then it necessarily must follow that the following language of Section 3716, supra, establishes statutory priority for personal property taxes, to-wit: "Every tax has the effect of a judgment against the person, * * * the judgment is not satisfied * * * *until the taxes are paid or the property sold for the payment thereof* * * *"

If the italicized language of Section 3716 creates a statutory priority for real property tax liens (*Weis* case, supra) then it must also establish a statutory priority for personal property taxes. In reference to the statements of the Circuit Court (R. 49-50) in regard to the effect of such a conclusion, we wish to point out that the *priority referred to pertains only to the particular property taxed.*

We have never made any contention that, as stated by the Circuit Court (R. 49-50), the priority, which we submit exists, extends to any property other than the particular property taxed. While it is true that Section 3821, Political Code of California, gives the assessor the right to seize property other than tax delinquent property, the petitioners claim no priority thereon.

(c) Section 3716 of the California Political Code establishes a priority for the personal property tax lien created by a seizure, pursuant to Section 3821 of the Political Code, of the property taxed.

We are assuming herein that (1) taxes are not inherently entitled to priority in California and (2) that Section 3716 of the Political Code does not create a priority for a mere *tax claim*.

Section 3716 (Appendix p. 5) of the California Political Code clearly establishes a priority for any local ad valorem tax lien. (See cases cited in point V (a), supra.)

In *R. C. A. Photophone, Inc. v. Huffman,* 5 Cal. App. (2d) 401, 42 Pac. (2d) 1059 (hearing in Supreme Court denied), the Court decided that when personal property (taxed) has been seized, pursuant to Section 3821 of the California Political Code (Appendix p. 8), a lien attaches to the property taxed and seized.

We therefore submit that the lien, created by the seizure of the cotton in question, is entitled to priority over any lien respondent may have acquired.

(d) The lien acquired by respondent is in no better position than that acquired by a private individual.

The Federal Courts sitting within the territorial jurisdiction of a particular state are bound by the statutory laws of that state and the judicial interpretations of those statutes by the Appellate Courts of that state except in so far as there is involved in any particular case a congressional statute or a provision of the Federal Constitution.

Erie Rd. Co. v. Tompkins, supra.

Therefore, unless the respondent can establish that there is some congressional statute which gives the lien which it acquired by virtue of the pledge herein priority over any existing claim for personal property taxes levied by the petitioners herein or unless it can establish that some constitutional provision would prevent the imposition of the tax herein it is our position that the respondent would be in no different position than would be a private lien holder.

In *City of New Brunswick v. United States,* 276 U. S. 547, the Court gave effect to a statutory preference of a vendor's lien involved therein which was retained by the United States Housing Authority. However, in that case there was a congressional statute which expressly provided that the interests of the United States in the lands in question should remain a first lien on the lands involved therein. Inasmuch as the Constitution and laws passed pursuant thereto are the supreme law of the land, it naturally follows that the Court gave priority to the lien retained by the United States Government.

We submit that we have established that there is no congressional preference given to the pledgee's lien acquired by the respondent herein and further, that the county may levy the tax in the first instance on this property because it is entirely owned by a private individual and the Commodity Credit Corporation is in the same position as would be a private lien holder and that the personal property taxes levied herein by petitioners are entitled to priority in payment over any preexisting lien interests which the respondent may have herein.

Wherefore, it is respectfully submitted that a writ of certiorari should be granted herein and the cause reviewed by this Honorable Court and that the decision of the United States Circuit Court of Appeals for the Ninth Circuit should be reversed and that of the District Court of the United States for the Southern District of California, Northern Division, should likewise be reversed.

Dated, Fresno, California,
August 7, 1940.

Respectfully submitted,
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(Appendix Follows.)



Appendix

EXHIBIT "A"

I. PERTINENT STATUTES AND CONSTITUTIONAL PROVISIONS OF THE STATE OF CALIFORNIA RELATING TO THE ASSESSMENT AND COLLECTION OF PERSONAL PROPERTY TAXES.

Section 1 of Article XIII of the Constitution of the State of California provides, in part, as follows:

> "All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. * * * and further provided, that property * * * such as may belong to the United States * * * shall be exempt from taxation * * *." (Amendment adopted November 3, 1914.)

Section 8 of Article XIII of said Constitution provides as follows:

> "The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March." (Original section, Constitution of 1879.)

Section 9a of Article XIII of said Constitution provides:

> "The taxes levied for any current tax year upon personal property and assessments upon possession of, claim to, or right to the possession

of land and upon taxable improvements located on land exempt from taxation, which are not a lien upon land sufficient in value to secure their payment, shall be based upon the rates for taxes levied for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure the payment thereof. Nothing in this section shall be construed to prohibit the equalization each year of the assessment on such property in the manner now or hereafter provided by law." (Amendment adopted November 3, 1936.)

(NOTE: Many of the sections of the Political Code hereinafter referred to were amended in 1939. However, we here quote such sections as they read at the time the taxes here in question were assessed.)

Section 3627 of the Political Code of the State of California provides:

"All taxable property must be assessed at its full cash value, except that all notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, mortgages, and any legal or equitable interest therein of the classes taxable under the provisions of section 16 of article thirteen of the constitution of this state, shall be assessed at their actual value of property located in or having its situs in this state of the corporation by which such shares of capital stock are issued. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land of the same quality and similarly situated shall be assessed at the same value." (Statutes 1929, p. 126; in effect April 6, 1929.)

Section 3628 of said Code provides:

"Except as otherwise provided in the constitution of this state, all taxable property shall be assessed in the county, city, city and county, town, township, or district in which it is situated. Land shall be assessed in parcels, or subdivisions, not exceeding six hundred forty acres each and tracts of land containing more than six hundred forty acres which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Land sold by the state for which no patent has been issued, shall be assessed the same as other land, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the state as principal upon the purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid, nor shall anything herein release any person, firm, corporation or association from their duty to file the statement required by law. In assessing notes and solvent credits and equitable or legal interests therein, not secured by mortgage, deed of trust, contract or other obligation, where land situated within this state is pledged as security therefor, a deduction from the assessed value shall be made of such

debts including notes, unsecured by mortgage, deed of trust, contract or other obligation where land situated within this state is pledged as security therefor, as may be owing by such person, firm, corporation or association to bona fide residents of this state." (Statutes 1929, p. 126; in effect April 6, 1929.)

Section 3629 of said Code provides, in part, as follows:

"The assessor must exact from each person a statement, under oath, setting forth specifically all the real and personal property not exempt from taxation owned by such person, or in his possession, or under his control, at twelve o'clock meridian on the first Monday in March, and it is hereby required that such person shall file such statement with the assessor between the first Mondays in March and July of each year and at any time during, before or after such dates furnish such information or records for examination as may be required by the assessor to make a proper assessment; provided, however, that no assessment shall hereafter be rendered invalid by reason of the failure of the assessor to demand or secure the statement required by this section prior to the making thereof. Such statement shall be in writing, showing separately:

"1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

"2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

"3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent."

Section 3636 of said Code provides:

"If the name of the absent owner is known to the assessor, or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name. If unknown to the assessor, and if it does not appear of record as aforesaid, the property must be assessed to unknown owners." (Statutes 1891, p. 107; in effect March 14, 1891.)

Section 3650 of said Code provided, in part, as follows:

"The assessor must prepare an assessment book, with appropriate headings, as directed by the state board of equalization, in which must be listed all property within the county, and which shall show under the appropriate heads:

"4. All personal property, showing the number, kind, amount and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment."

Section 3716 of said Code provided, in part, as follows:

"Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed un-